

# EXHIBIT B

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.**

**Before the Honorable David P. Shaw  
Administrative Law Judge**

**In the Matter of**

**CERTAIN SMART THERMOSTATS,  
SMART HVAC SYSTEMS, AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-1185**

**COMPLAINANT ECOFACTOR'S MOTION TO TERMINATE THE INVESTIGATION  
IN PART WITH RESPECT TO CERTAIN ASSERTED CLAIMS AGAINST CERTAIN  
RESPONDENTS**

Pursuant to 19 C.F.R. § 210.21(a), Complainant EcoFactor, Inc. (“EcoFactor”) respectfully moves to terminate the above-captioned Investigation in part with respect to: United States Patent No. 8,498,753 as to Alarm.com Incorporated and Alarm.com Holdings, Inc. (collectively, “Alarm.com”), ecobee Ltd. and ecobee, Inc. (collectively, “ecobee”), Google LLC (“Google”), and Vivint, Inc. (“Vivint”) (collectively, “Respondents”); United States Patent No. 8,423,322 and United States Patent No. 10,018,371 as to ecobee; and United States Patent No. 8,131,497 as to Alarm.com. Termination with respect to these patents and identified Respondents will narrow the scope of the issues to be presented at trial and briefed thereafter. There are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the Investigation. 19 C.F.R. § 210.21(a)(1).

If EcoFactor’s Motion is granted, the following claims will remain at issue in this Investigation:

| <b>Asserted Patent</b>     | <b>Claim(s) at Issue</b> | <b>Respondent(s)</b>      |
|----------------------------|--------------------------|---------------------------|
| U.S. Patent No. 8,131,497  | Claims 1, 2, and 5       | Google; Ecobee; Vivint    |
| U.S. Patent No. 8,423,322  | Claims 1, 2, and 5       | Google; Alarm.com; Vivint |
| U.S. Patent No. 10,018,371 | Claim 9                  | Google                    |

| Asserted Patent           | Claim(s) at Issue | Respondent(s) |
|---------------------------|-------------------|---------------|
| U.S. Patent No. 8,498,753 | None              | None          |

**Ground Rule 3.2 Certification:** EcoFactor certifies that it made reasonable, good-faith efforts to resolve this matter with Respondents and Staff. Alarm.com does not oppose the motion. Ecobee, Google, and Vivint do not oppose the withdrawal of the infringement allegations as to the '753, '322, and '371 Patents and take no position as to the withdrawal of the infringement allegations as to the '497 Patent. Google further “reserves the right to take a position on the motion papers as to any other issue.” Staff will take a position on the filed papers. All parties waive the two-day notice.

Commission Rule 210.21(a)(1) provides that “any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein.” 19 C.F.R. § 210.21(a)(1). The Commission has held that, “in the absence of extraordinary circumstances, termination of the investigation will be granted to a complainant during the prehearing stage of an investigation.” *Certain Antivenom Compositions & Prods. Containing Same*, Inv. No. 337-TA-903, Order No. 14 at \*2 (Mar. 11, 2014) (internal citation omitted). There are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the Investigation. 19 C.F.R. § 210.21(a)(1).

In this investigation, there are no extraordinary circumstances that warrant denial of EcoFactor’s motion for partial termination. *See Certain Digital Media Devices, Including Televisions, Blue-Ray Disc Players, Home Theater Systems, Tablets and Mobile Phones, Components Thereof and Associated Software*, Inv. No. 337-TA-882, Order No. 49 at 1 (Mar. 12, 2014) (granting motion for partial termination where complainant sought to withdraw 13 claims). Further, as required by Commission Rule 210.21(a), there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. Thus, to narrow

the issues to be presented at trial and to be briefed afterward, EcoFactor respectfully requests that the Administrative Law Judge issue an initial determination terminating this Investigation as follows: United States Patent No. 8,498,753 as to all Respondents; United States Patent No. 8,423,322 and United States Patent No. 10,018,371 as to ecobee; and United States Patent No. 8,131,497 as to Alarm.com., based on withdrawal of those allegations from EcoFactor's Complaint.

Dated: November 16, 2020

Respectfully submitted,

/s/ Matthew D. Aichele

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of **COMPLAINANT ECOFACTOR'S MOTION TO TERMINATE THE INVESTIGATION IN PART WITH RESPECT TO CERTAIN ASSERTED CLAIMS AGAINST CERTAIN RESPONDENTS** was served on the following, in the manner indicated below on November 16, 2020:

The Honorable Lisa R. Barton  
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